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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4982 of 2007

Shri Subhash Mahadeo Chauthai ...Petitioner

V/s.

Sou Kamal Jijabhau Kayate ...Respondent

Mr.U.P. Warunjikar for the Petitioner
Mr.N.A.Kulkarni for the Respondent

CORAM : B.H.MARLAPALLE,J.
DATED : 11th December, 2007

P.C.

Heard Mr.Warunjikar, the Learned Counsel for the Petitioner who is the Proprietor of M/s. Hi Pack Ltd. The Respondent employee had raised a demand for reinstatement on the ground that she was illegally terminated from service w.e.f. 12-12-1994 by the Petitioner and the said demand was referred for adjudication to the Labour Court at Pune in Reference(IDA) NO. 279/1995. Prior to this reference the Respondent employee had also filed Application(WCA) No. 134/1995 claiming compensation for the partial disablement/injury that she had sustained in an accident from 27-6-1994 while on duty with the Petitioner company. The Commissioner for Workmens Compensation passed an Award on 29-4-2002 and directed the company to

pay an amount of Rs. 2,670/- as lumpsum compensation to the claimant.

2. Reference(IDA) NO.279/1995 was decided by an exparte award dated 6-10-1998 by the First Labour Court at Pune and the company was directed to reinstate the employee on her original post with full backwages in the intervening period and continuity of service. This Award dated 6-10-1998 was not implemented for number of years and,therefore,the employee approached the Industrial Court in Comp(ULP)No. 123/2005 filed under item 9 of Schedule IV of the MRTU & PULP Act, 1971 ('the Act' for short). On notice the Respondent Company appeared in the said complaint and opposed. Oral evidence was recorded on behalf of both the parties and it was contended by the company that its operations were closed from 3-10-1997 and, therefore, there was no question of reinstatement. The Learned Member of the Industrial Court allowed the complaint by Judgement and order dated 21-4-2007 and directed the company to reinstate the employee on her earlier post of helper with continuity of service and full backwages or in the alternative to pay the compensation of Rs. 2,00,000/- in lieu of reinstatement with continuity of service with full backwages and this amount was directed to be paid within two months. The present petitioner company is aggrieved by the order dated 21-4-2007 passed by the

Industrial Court.

3. It was not permissible for the company to state that the Award dated 6-10-908 passed by the First Labour Court, Pune was not binding on it or it was illegal on any count while opposing Comp(ULP)No. 123/2005. The employee had waited for a long 7 years and then approached the Industrial Court. The only remedy available for the Petitioner was to apply for setting aside the exparte Award and for restoration of reference that too strictly as per the provisions of the Industrial Disputes Act, 1947 and not at any time. Having not done so, the Award was binding on the company and, therefore, rightly the Industrial Court by the impugned order held that the company was guilty of unfair labour practice under item 9 of Schedule IV of the Act.

4. So far as the contentions of the Petitioner Company that the factory was closed from 3-10-1997 are concerned, oral depositions of the Petitioner before the Industrial Court do indicate that beyond his oral statement, there was no documentary evidence placed on record insupport of the statement that the factory was closed from 3-10-1997. The Company could have brought on record the documentary evidence like electricity bills, sales-tax certificate, central excise department

certificate or any other documentary proof including the notice sent to the Deputy Commissioner of Labour or to the Factory Inspector or to the ESI Authorities stating that the factory was closed from 3-10-1997 or any other day. No such evidence was placed on record and it has come in the evidence of the Petitioner himself that approximately 20-25 workers were working in the factory at the relevant time, therefore, obviously it was covered under the ESI Act. Under these circumstances the finding recorded by the Industrial Court that there was no evidence regarding closure of the factory from 3-10-1997 requires to be accepted. Even otherwise the Industrial Court had given directions of payment of compensation of Rs. 2 lacs in lieu of reinstatement and backwages. This is equally just and proper for both the parties and, therefore, Petitioner Company has the choice of paying the lumpsum compensation amount as directed by the Industrial Court in the impugned order. The fact remains that on any count the impugned order does not call for any interference under Article 227 of the Constitution.

5. Hence, the Petition is rejected summarily.

[B.H.MARLAPALLE,J.]